IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 14475 of 2004(W)

PETITIONER:

PALAKKAD PLANTATION AND GENERAL WORKERS UNION (H.M.S.), REPRESENTED BY ITS GENERAL SECRETARY, PADAGIRI P.O., NELLIYAMPATHY, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH (SR.)
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SMT.G.GEETHISHA
SMT.M.R.VALSA

RESPONDENT:

NELLIYAMPATHY TEA PRODUCE COMPANY LIMITED, REPRESENTED BY THE SENIOR MANAGER (OPERATIONS), MANALAROO ESTATE, PADAGIRI, NELLIYAMPATHY, PALAKKAD.

BY ADV.SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH
SMT.PRIYA MANJOORAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 14475/2004(W)

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE AWARD IN I.D. NO.56/2001 ON THE FILE OF THE COURT OF THE INDUSTRIAL TRIBUNAL, PALAKKAD DATED 27.10.2003.

/TRUE COPY/

P.A. TO JUDGE

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S.SIRI JAGAN, J.

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W.P.(C) No. 14475 of 2004

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Dated this the 5th day of December, 2007

JUDGMENT

The Union in ID no.56/2001 before the Industrial Tribunal Palakkad challenges in this writ petition Ext.P1 award passed by the Tribunal in that ID. The issue referred for adjudication was as follows:

> "Whether the dismissal of Sri.Murukan and Sri.Arumughan is justifiable? If not what relief they are entitled to?."

2. Since the dismissal of the workmen was after having been found guilty in a domestic enquiry, the validity of the enquiry was considered as a preliminary point. The tribunal after adjudication of the preliminary point came to the finding that the enquiry was conducted validly and properly and that there was sufficient evidence adduced in the enquiry to support the charges against the workmen. Thereafter, since the charges proved against the workmen involved theft of property belonging

to the management, the tribunal upheld the punishment of dismissal imposed on the workmen.

2. The union is challenging that award on the following grounds: First is that the workmen were not paid subsistence allowance during the enquiry. Second, in the enquiry the management produced documents, copies of which were not furnished to the workmen. Thirdly, the enquiry officer relied on statements made by the workmen before the police, which the enquiry officer ought not to have done.

3. In answer to the same, the counsel for the management would contend that the workmen were not suspended as they were only temporary employees. Regarding the documents the counsel for the management would submit that list of documents were given in advance to the workmen and they were also permitted to peruse the documents. Therefore no principles of natural justice have been violated. Regarding the reliance on the statements of the workmen before the police, the counsel would argue that since the Rules of Evidence Act does not apply to departmental/domestic enquiries, the reliance on the statements before the police cannot be held against the

validity of the enquiry. He also relies on the Supreme Court in **Kuldip Singh v. State of Punjab** (1997 (1) LLJ 131) in this regard.

4. I have considered the rival contentions in detail. Regarding the first contention of non-payment of subsistence allowance, the industrial tribunal has held in paragraphs 2-6 of Ext.P1.

> "The first point raised by the union in the charter of demands dated 15.1.01 is that the subsistence allowance was not paid to the delinquent workmen. This union has not denied the averment of the management that they were only temporary workmen and they were not suspended from service. According to management, they remained absent during the relevant time. The management has also issued showcause notices to the workmen for unauthorised absence. In the circumstance, it cannot be held that the workmen were suspended pending enquiry and they were entitled to claim the subsistence allowance."

5. In view of the above findings, I do not think that the enquiry is vitiated for non-payment of subsistence allowance. Further, non-payment of subsistence allowance alone is not a ground for vitiating the enquiry unless it is supported by pleadings and proof of prejudice caused to the workmen on account of non-payment of subsistence allowance. There is no pleadings or proof regarding any prejudice caused to the workmen on account of non-payment of subsistence allowance

in this case. Therefore, I do not find any merit in that contention.

6. The contention regarding nonsupply of copies of documents have been dealt with by the tribunal in paragraphs 2-8 of award, thus:

> "The workman had submitted Ext.W6 representation dated 4.11.2000 to the enquiry officer requesting to furnish them the documents produced on that day. It is seen from the enquiry proceedings that some material documents were produced on 4.11.2000 and the same were marked as Exhibits. The Enquiry Officer has noted in the proceedings dated 4.11.2000 that the representative of the workmen requested for the copies of these documents and also for adjournment of the enquiry for studying the same. Accordingly, the enquiry was adjourned to 8.11.2000. It is further observed from the enquiry proceedings dated 8.11.2000, that the Enquiry Officer had asked the delinquent workmen before the cross-examination of the witness whether they wanted to read out the documents produced on 4.11.2000. They replied in the negative and this has been recorded in the enquiry proceedings. In Ext.B4 letter dated 8.11.2000 addressed to the Enquiry Officer, the workmen had admitted that they had received some of the documents produced by the management on 4.11.2000. However, it is not specified therein the details of the documents which were received or not received by them. The witness, Devadas who had produced the above documents was cross-examined on behalf of the workmen only on 8.11.2000. The material documents which were produced on 4.11.2000 are documents connected with the police case viz. scene Mahazer, Seizer Mahazer, release order, confession statement etc. It is clear from the enquiry file that the list of these documents had been furnished to the workmen in advance and they were also given ample opportunity to peruse them during the course of enquiry. It was therefore possible for the workmen and their union-representative to study these documents with the assistance of a legal expert before 8.11.2000 and to get ready for the cross-examination of Devadas on these documents. I

> therefore do not find any merit in the contention of the union that the enquiry is vitiated for the reason of non-furnishing the copies of certain documents to the workmen."

7. I do not find any perversity whatsoever in the said findings. After the production of those documents, at the request of the workmen, the enquiry was adjourned to enable them to prepare their defence and they were also given opportunity to peruse the documents. As such there is no violation of principles of natural justice as contended by the counsel for the petitioner.

8. Regarding the reliance on the statements made before the police, it is settled law that Rules of Evidence, under the Evidence Act are not applicable to proceedings in a domestic enquiry. Domestic enquiry cannot be equated to a criminal trial. Further in the decision in **Kuldip Singh v. State of Punjab,** Supreme Court has held that statements before the police cannot be held to be inadmissible in evidence in domestic enquiries. Therefore the contention of the petitioner on this count also without any merits.

9. Regarding the question of punishment admittedly the workmen were found guilty of theft. For such mis-conduct, the punishment of dismissal from service cannot be held to be

shockingly disproportionate to the gravity of the misconduct. For the above reasons, I do not find any merit in the writ petition accordingly, the same is dismissed.

S.SIRI JAGAN,
JUDGE

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